

1
2
3
4
5
6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **TACOMA DIVISION**

10 **OBRIA GROUP, INC., and MY**
11 **CHOICES d/b/a OBRIA MEDICAL**
12 **CLINICS PNW,**

13 *Plaintiffs,*

14 v.

15 **ROBERT FERGUSON**, in his official
16 capacity as Attorney General for the
17 State of Washington,

18 *Defendant(s).*

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

No. 3:23-cv-06093-TMC

NOTE ON MOTION CALENDAR:

April 12, 2024

19
20 Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs Obria
21 Group, Inc. and My Choices d/b/a Obria Medical Clinics PNW (“Plaintiffs”)
22 respectfully move the Court for leave to file a Supplemental Complaint (Ex. A) to add
23 new information that is relevant to the Court’s consideration of their Motion for
24 Preliminary Injunction (Dkt. 4) and Attorney General Ferguson’s Motion to Dismiss
25 and Opposition to Plaintiff’s Motion for Preliminary Injunction (Dkt. 21). Plaintiffs
26 have attached to this motion their proposed First Supplemental Verified Complaint
27 and a document showing a redline comparison of that pleading with the original

28 **PLAINTIFFS’ MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690

1 Verified Complaint filed in this matter. In the alternative, Plaintiffs seek leave to file
2 a supplemental declaration concerning the proffered new facts insofar as they bear
3 on the pending dispositive motions. The Attorney General has stated that he cannot
4 consent to this motion at this time.

5 Plaintiffs have alleged speech, religious exercise, associational, and other
6 harms from Attorney General Ferguson's unlawful civil investigative demands
7 ("CIDs"). Plaintiffs now seek to file a supplemental complaint to add allegations
8 regarding Obria PNW's recent denial of insurance coverage, which add to and
9 compound the existing harms in this case. On March 21, 2024, Obria PNW received
10 notice that its insurance agency is presently unable to secure an underwriter to renew
11 and extend an essential insurance policy as a direct result of Attorney General
12 Ferguson's CIDs. Obria PNW is actively working to obtain alternative coverage.

13 These new sworn allegations are directly relevant to the pending motions
14 before this Court, both of which concern the legal harms that Plaintiffs have suffered
15 as a result of the CIDs. The loss of insurance coverage because of Attorney General
16 Ferguson's unlawful demands constitutes "legally cognizable harm" likely to be
17 redressed by an order from this Court enjoining enforcement of the CIDs. *Twitter,*
18 *Inc. v. Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022). "A number of courts have found
19 plaintiffs to have standing under analogous circumstances" where the plaintiff lost
20 insurance coverage due to the defendant's challenged action. *Roll v. Enhanced*
21 *Recovery Co., LLC*, 2021 WL 7501160, at *3 (M.D. Fla. Nov. 10, 2021) (collecting
22 cases), *report and recommendation adopted*, 2021 WL 7501164 (M.D. Fla. Dec. 17,
23 2021). Notably, both the Ninth Circuit and other courts in this District have
24 recognized in other litigation against the State of Washington that a loss of insurance
25 coverage due to state action is an Article III injury. *Cedar Park Assembly of God of*
26 *Kirkland, Washington v. Kreidler*, 860 F. App'x 542, 543 (9th Cir. 2021); *Cedar Park*

1 *Assembly of God of Kirkland, Washington v. Kreidler*, 673 F. Supp. 3d 1169, 1179
2 (W.D. Wash. 2023).

3 Permitting Plaintiffs to file this supplemental complaint is warranted under
4 Rule 15(d), which provides that “the court may, on just terms, permit a party to serve
5 a supplemental pleading setting out any transaction, occurrence, or event that
6 happened after the date of the pleading to be supplemented.” FED. R. CIV. P. 15(d).
7 “Rule 15(d) is intended to give district courts broad discretion in allowing
8 supplemental pleadings.” *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). “[I]ts use
9 is favored as a tool of judicial economy and convenience,” and it is liberally construed
10 to allow supplementation unless the opposing party will be unduly prejudiced.
11 *Dominguez v. Isip*, No. C08-1581-JCC, 2009 WL 1175317, at *1 (W.D. Wash. May 1,
12 2009) (internal quotations and citations omitted); *LaSalvia v. United Dairymen of*
13 *Arizona*, 804 F.2d 1113, 1119 (9th Cir. 1986). Motions to file supplemental pleadings
14 “are to be freely granted when doing so will promote the economic and speedy
15 disposition of the entire controversy between the parties, will not cause undue delay
16 or trial inconvenience, and will not prejudice the rights of any other parties to the
17 action.” *Powell v. IRS*, 263 F. Supp. 3d 5, 7 (D.D.C. 2017) (quoting *Hall v. CIA*, 437
18 F.3d 94, 101 (D.C. Cir. 2006)).

19 Consistent with this lenient standard, the Court should grant Plaintiffs leave
20 to file a supplemental complaint to add facts regarding Obria PNW’s denial of vital
21 insurance coverage resulting from Attorney General Ferguson’s CIDs. Doing so will
22 serve judicial convenience by promoting a fair disposition of the pending dispositive
23 motions. Plaintiffs’ supplemental complaint will not cause trial inconvenience
24 because dispositive motions have yet to be ruled on. To the extent the supplemental
25 complaint causes any minor delay in this Court’s ruling on the dispositive motions,
26 such as by allowing a reasonable schedule for Attorney General Ferguson to respond,
27 such delay is warranted to ensure all relevant facts are considered and judicial

1 economy is served. Attorney General Ferguson will not be unduly prejudiced by the
2 addition of facts to the record that bear on active legal questions and that result
3 naturally and directly from his unlawful issuance of the instant CIDs. Plaintiffs have
4 moved with all speed in informing the Court and Attorney General Ferguson of the
5 proffered supplemental facts. Plaintiffs filed their Notice of Supplemental
6 Information on March 22, 2024—one day after Obria PNW received notice that its
7 coverage would not be renewed.

8 On March 26, 2024, Plaintiffs sought Attorney General Ferguson’s consent to
9 supplement their Complaint. Without providing his position on the motion, Attorney
10 General Ferguson requested copies of Obria PNW’s insurance application and notice
11 of declination. Plaintiffs declined to provide those materials prior to discovery in this
12 action since they do not bear on whether Plaintiffs should be entitled to assert these
13 allegations in a supplemental pleading and because Plaintiffs’ past disclosures of
14 relationships with third parties has resulted in Attorney General Ferguson
15 expanding his investigation to those third parties. Plaintiffs declined to disclose these
16 documents until discovery, but proposed that Attorney General Ferguson consent to
17 the supplementation, subject to his right to respond. Nevertheless, the Attorney
18 General stated that he cannot consent to this motion at this time.

19 Thus, consistent with Federal Rule of Civil Procedure 15(d) and to serve
20 judicial economy, Plaintiffs respectfully request that the Court grant leave to file the
21 attached Supplemental Complaint, or, in the alternative, grant leave to file a
22 supplemental declaration concerning the proffered new facts insofar as they bear on
23 the pending dispositive motions.

24 Respectfully submitted this 28th day of March, 2024.

/s/ Lincoln Davis Wilson

Kristen K. Waggoner, Wa. Bar No. 27790
Lincoln Davis Wilson, Wa. Bar No. 53764
Timothy A. Garrison, Mo. Bar No. 51033*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
kwaggoner@ADFLegal.org
lwilson@ADFLegal.org
tgarrison@ADFLegal.org

Nathaniel L. Taylor, Wa. Bar No. 27174
Abigail St. Hilaire, Wa. Bar No. 48194
ELLIS, LI & MCKINSTRY PLLC
1700 7th Ave Suite 1810
Seattle, WA 98101
Telephone: 206-682-0565
ntaylor@elmlaw.com
asthilaire@elmlaw.com

Counsel for Plaintiffs
**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on March 28, 2024, I caused a true and correct copy of the foregoing document to be served via ECF upon all counsel of record.

DATED: March 28, 2024.

/s/ Lincoln Davis Wilson
Lincoln Davis Wilson